

Indiana Public Defender Commission Meeting Minutes

March 24, 2010

Chairman Mark Rutherford called the business meeting to order at 2:10 pm. Commission members in attendance at the start of the meeting were Susan Carpenter, David Hensel, Peter Nugent, and Rep. Greg Steuerwald. Also in attendance were staff counsels Deborah Neal and Michele Lofthouse, Administrative Assistant Yolanda Collins, and Executive Director of the Indiana Public Defender Council Larry Landis.

Rep. Vernon Smith arrived at the meeting after it was called to order (specific entrance noted below). Rep. Steuerwald had to leave the meeting early (specific departure noted below).

Because a quorum was not present at the start of the meeting, those agenda items not requiring a vote were discussed first.

Staff Counsel Memoranda. Deborah Neal detailed her contact with the counties during the quarter as follows:

Huntington County: Huntington County is not included in the memoranda but it is interested in getting involved in the program. Ms. Neal met with the three judges to discuss the program's requirements. The judges were interested in the past but could not get the council interested. Now that everyone needs money, they are revisiting the issue.

Benton County: No claim was received from Benton County for the third quarter, despite being contacted by counsel about submitting the claim. Ms. Neal will contact the Benton County Circuit Court Judge regarding the public defense program in the county.

Ms. Neal also visited Jennings, Rush, Marshall and Fountain Counties.

LaPorte County: LaPorte County is now in compliance.

Blackford County: One of the issues causing Blackford County's non-compliance is the lack of attorneys in the county to take public defense cases. [At this time Rep. Vernon Smith arrived at the meeting and a quorum of six members was reached.] The two attorneys that are out of compliance are not even located in Blackford County. The attorneys that are located in Blackford County are all between sixty and seventy years old. Ms. Neal inquired as to whether the Commission has ever thought about contacting the law schools about counties needing public defenders. There is a federal program that provides forgiveness of a certain amount of student loans if a graduate engages in public defense work.

The county is trying to resolve the non-compliance issues, but needs help to do so. Ms. Neal feels that the county is not trying to get around the Commission's requirements. The judge is

very concerned about good representation. He informed Ms. Neal that there are certain attorneys that he will not appoint because he has received complaints. There have been no complaints about compensation. The judge does not believe that is an issue. The two public defenders that are from other counties do not request mileage reimbursement when they travel to Blackford County. The county wants to keep the program running, and Ms. Neal feels the Commission should do what it can to help out the county. Ms. Neal left information on cash bonds with Blackford County judges that may help increase revenues for public defense.

Because a quorum was present and Rep. Steuerwald anticipated having to leave early, the Staff Counsel Memoranda report was suspended so that those items requiring a vote could be addressed with a quorum present.

Requests for 50% Reimbursement in Capital Cases: Michele Lofthouse reported that capital claims totaled \$189,543.86 for this quarter, and explained the rationale for the nominal deductions (lack of itemized expense receipts and fees incurred subsequent to sentencing). David Hensel moved to approve payment of capital claims in the amount of \$189,543.86, and Peter Nugent seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION		
Reimbursement Requests in Capital Cases		
March 24, 2010		
COUNTY	DEFENDANT	TOTAL
Marion	Allen	\$42,689.78
	Davis*	\$38,850.43
	Turner**	\$59,264.46
Parke	Cottrell	\$2,066.50
Putnam	Stevens	\$9,948.04
Vigo	Walker***	\$36,724.65
TOTAL		\$189,543.86
Notes:		
* Davis - Denied \$72.62 of David King's Sept./Oct. invoice because itemized expense receipts for Staples and FedEx were missing.		
** Turner - Denied \$2,608.42 of Dr. Foran's invoice because it included work performed subsequent to the 9/15/09 withdrawal of the death penalty.		
*** Walker - Denied \$803.06 for fees and expenses incurred after sentencing.		

Larry Landis noted that with the recent Katron Walker plea agreement, there are only five pending capital cases in the State of Indiana, and no new cases have been filed since 2008. We are in a real decline, and almost a de facto moratorium.

Deborah Neal brought to the Commission's attention the Mark Allen Wisehart matter that is set for retrial in Madison County. The case was originally tried in 1983, prior to the Commission's existence. The Seventh Circuit sent the case back to the trial court in 2005 to retry him, interview the jurors, or dismiss the charges. Susan Carpenter reported that there was a conflict between the prosecutor and judge on what to do which delayed all activity on the case until June of 2009. The county has not requested reimbursement from the Commission but will start doing so and intends to request reimbursement from as far back as June 2009. The Commission is allowed to approve for good cause claims submitted beyond the 120-day deadline if it so chooses.

Requests for 40% Reimbursement in Non-Capital Cases: Deborah Neal reported claims in non-capital cases totaled \$3,916,356.01. Madison County is requesting approval of an amendment to its 2009 third quarter request because Geoff Yelton took over during that quarter and was unsure of how to prepare the claim form. An error was subsequently found. Ms. Neal recommends paying it. In addition, Jay County submitted its request ten days late. Ms. Neal asked that the Commission not penalize Jay County because there was a misunderstanding about whether to list the amount that was appropriated or the amount that was actually spent. She visited Jay County and worked with Tom Diller on how to appropriately fill out the reports.

Rep. Vernon Smith moved to approve payment of the non-capital claims in the amount of \$3,916,356.01, and Susan Carpenter and Rep. Greg Steuerwald simultaneously seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

COUNTY	Total Expenditure	Adjustment For Non-Reimbrsbl	% of Adjstmt	Eligible Expenditure	40% Reimbursed
ADAMS	\$109,144.48	\$35,911.38	33%	\$73,233.10	\$29,293.24
ALLEN	\$874,767.85	\$124,594.16	14%	\$750,173.69	\$300,069.48
BENTON				\$0.00	\$0.00
BLACKFORD	\$45,733.25	\$12,607.00	28%	\$33,126.25	\$13,250.50
CARROLL	\$30,298.33	\$8,023.40	26%	\$22,274.93	\$8,909.97
CLARK	\$155,415.27	\$22,780.89	15%	\$132,634.38	\$53,053.75
DECATUR	\$42,145.43	\$14,775.98	35%	\$27,369.45	\$10,947.78
FAYETTE	\$93,619.65	\$19,648.57	21%	\$73,971.08	\$29,588.43
FLOYD	\$157,242.14	\$27,275.75	17%	\$129,966.39	\$51,986.56
FOUNTAIN	\$52,463.11	\$13,990.16	27%	\$38,472.95	\$15,389.18
FULTON	\$74,425.29	\$29,977.53	40%	\$44,447.76	\$17,779.10
GRANT	\$391,947.59	\$43,085.49	11%	\$348,862.10	\$139,544.84
GREENE	\$90,057.54	\$11,469.12	13%	\$78,588.42	\$31,435.37
HANCOCK	\$154,892.70	\$49,651.09	32%	\$105,241.61	\$42,096.64
HOWARD	\$395,310.87	\$65,895.77	17%	\$329,415.10	\$131,766.04
JASPER	\$86,548.11	\$20,340.80	24%	\$66,207.31	\$26,482.92

JAY	\$82,754.45	\$14,506.21	18%	\$68,248.24	\$27,299.30
JENNINGS	\$59,055.51	\$12,422.39	21%	\$46,633.12	\$18,653.25
KNOX	\$170,729.92	\$68,898.32	40%	\$101,831.60	\$40,732.64
KOSCIUSKO	\$144,532.17	\$49,243.65	34%	\$95,288.52	\$38,115.41
LAKE	\$839,107.23	\$1,167.05	0%	\$837,940.18	\$335,176.07
LAPORTE	\$145,984.59	\$25,635.00	18%	\$120,349.59	\$48,139.84
MADISON	\$405,531.19	\$25,887.07	6%	\$379,644.12	\$151,857.65
MARION	\$4,147,267.30	\$1,163,647.44	28%	\$2,983,619.86	\$1,193,447.94
MARTIN	\$13,038.97	\$4,411.48	34%	\$8,627.49	\$3,451.00
MONROE	\$394,434.82	\$69,480.39	18%	\$324,954.43	\$129,981.77
MONTGOMERY	\$137,786.58	\$62,819.79	46%	\$74,966.79	\$29,986.72
NOBLE	\$96,724.89	\$21,232.96	22%	\$75,491.93	\$30,196.77
OHIO	\$17,106.16	\$1,118.73	7%	\$15,987.43	\$6,394.97
ORANGE	\$42,606.65	\$10,211.51	24%	\$32,395.14	\$12,958.06
PARKE	\$28,977.56	\$5,539.83	19%	\$23,437.73	\$9,375.09
PERRY	\$71,071.96	\$22,181.69	31%	\$48,890.27	\$19,556.11
PIKE	\$48,801.52	\$8,940.77	18%	\$39,860.75	\$15,944.30
PULASKI	\$41,367.33	\$3,097.25	7%	\$38,270.08	\$15,308.03
RUSH	\$65,564.54	\$16,712.53	25%	\$48,852.01	\$19,540.80
SAINT JOSEPH	\$474,317.31	\$70,250.60	15%	\$404,066.71	\$161,626.68
SHELBY	\$95,644.51	\$10,223.67	11%	\$85,420.84	\$34,168.34
SPENCER	\$31,233.00	\$2,738.00	9%	\$28,495.00	\$11,398.00
STEUBEN	\$63,848.70	\$14,688.02	23%	\$49,160.68	\$19,664.27
SULLIVAN	\$49,550.53	\$12,305.57	25%	\$37,244.96	\$14,897.98
SWITZERLAND	\$55,266.32	\$7,441.25	13%	\$47,825.07	\$19,130.03
TIPPECANOE	\$503,019.19	\$75,800.00	15%	\$427,219.19	\$170,887.68
UNION	\$22,606.80	\$949.91	4%	\$21,656.89	\$8,662.76
VANDEBURGH	\$669,674.32	\$122,588.10	18%	\$547,086.22	\$218,834.49
VERMILLION	\$28,538.44	\$11,349.31	40%	\$17,189.13	\$6,875.65
VIGO	\$462,622.29	\$110,053.31	24%	\$352,568.98	\$141,027.59
WABASH	\$55,894.10	\$7,364.40	13%	\$48,529.70	\$19,411.88
WARREN	\$7,204.50	\$2,213.00	31%	\$4,991.50	\$1,996.60
WASHINGTON	\$120,130.49	\$33,173.12	28%	\$86,957.37	\$34,782.95
Madison Amend	\$5,281.59				
TOTAL	\$12,346,005.45	\$2,568,319.41		\$9,777,686.04	\$3,916,356.01

LaGrange County Comprehensive Plan: Michele Lofthouse presented LaGrange County's Comprehensive Plan and addressed the concern she and Ms. Neal had regarding the language that the Board would issue contracts based upon the recommendation of the judges. While it is understood that Board members will consult with judges when issuing contracts, the inclusion of the language implies that approval from the judges is necessary and gives the impression that the Board may not be independent from the courts. Staff counsel's proposal is to remove the language "upon the recommendation of" the judges.

Rep. Steuerwald moved to send the LaGrange County Comprehensive Plan back to the county to make the change recommended by staff counsel. David Hensel seconded the motion. The motion passed unanimously.

Approval of Minutes from 12/16/09 Meeting: Peter Nugent noted that on page three, paragraph four, attorney should be client. Mr. Nugent moved to make the change and approve the minutes as amended. All other Commission members simultaneously seconded the motion. The motion passed unanimously.

At 2:30, Rep. Greg Steuerwald left the meeting. All remaining matters do not require a quorum.

LaGrange County Comprehensive Plan: Discussion returned to the LaGrange County comprehensive plan after Rep. Steuerwald's departure. There was concern about whether LaGrange County could submit a claim for reimbursement for the first quarter of 2010 if the plan was not approved until the June meeting. Ms. Neal said that the county could do so and that the Commission could vote to approve reimbursement so long as there was compliance with caseload requirements.

It was noted that the judges' recommendations were not binding, and that the Board need only consider the recommendations. However, the current wording suggests that there is no separation between the courts and the board. Peter Nugent stated that he liked the idea of receiving input from judges, especially in smaller counties. Ms. Neal stated that the Commission wants the county public defender boards to know their responsibility and they are not figure heads.

Staff Counsel Memorandum: Discussion returned to Deborah Neal's report on county visits.

Huntington County: Huntington is interested in participating in the program. Rep. Smith asked about the impact on the reimbursement percentage if more counties become involved. Ms. Neal stated that as more counties become involved, the percentage reimbursement may be reduced. Reimbursement starts from the point in time that the county comes into the program.

The Commission's funds are non-reverting. This is a budget year, and Larry Landis will be lobbying for an increase. It is important to educate the legislature as to the importance of public defense funds. It is hard to control the budget because public defenders have no control over how many cases are filed.

Compliance Summary and Warning Letters: Ms. Neal reported that more and more public defenders are in compliance. Perry County was sent a warning letter. Larry Landis will be attending the meeting of Chief Public Defenders tomorrow, and if the Commission would like to convey anything, let him know.

Clark County should be in compliance next quarter. There was an abnormal amount of Class D felony filings that caused the non-compliance issues.

Financial Status of Public Defense Fund: Since 2001, the Commission has used the following fiscal year's allotment to pay the last quarter claims from the previous year (June claims paid after July 1st). If claims and allotments remain the same, by 2012 we will be spending the current year's budget without having holdover claims. This is the first year that the Commission has been able to reimburse the full 40% without have to pro-rate the percentage of return.

It was discovered just prior to the meeting that the State erroneously took \$5.4 million out of the Commission's account. Due to the diligent efforts of Jan Smith, Tom Carusillo, and Lilia Judson with State Court Administration, the error was acknowledged and the funds were returned to the account.

Election of Chairman: The Commission decided that it would vote on the chairman every two years. Chairman Rutherford acknowledged that this requires a vote and there is not a quorum, but because the vote does not involve the counties or claims for reimbursement the Commission can proceed with the election in order to conduct its business. The election can always be redone at the next meeting. The floor was opened for discussion. Peter Nugent nominated Mark Rutherford to again serve as chairman and moved to have the nomination approved. David Hensel seconded the motion. There was no discussion and the motion passed unanimously.

Other Matters: Larry Landis had nothing to report on behalf of the Indiana Public Defender Council. Chairman Rutherford reported on the Department of Justice Symposium that took place in February 2010. Mr. Landis invited Chairman Rutherford to attend with him, and Ms. Neal also attended. It was very informative, and there was a lot of enthusiasm and spirit. One interesting concept that was discussed at the Symposium was the possibility of a federal public defender program. The DOJ is very active with respect to indigent defense, and seems to be following through. There were a lot of prosecutors in attendance, which provided an interesting and helpful point of view.

Adjournment: The next Commission meeting is scheduled for June 23, 2010. There being no further business to discuss, David Hensel moved to adjourn the meeting, and Rep. Smith seconded the motion. The motion passed and the meeting adjourned at 2:58.

Mark Rutherford, Chairman

Date